

**AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND
THE CITY OF MILPITAS GRANTING PROGRAM FUNDS FOR THE FISCAL YEAR
2005 HOMELAND SECURITY GRANT WHICH INCLUDES; YEAR 2005 EMERGENCY
MANAGEMENT PERFORMANCE GRANT AND 2005 CERT FUNDING**

BACKGROUND

The Cities of Campbell, Cupertino, Gilroy, Los Altos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, Sunnyvale, the Towns of Los Gatos, Los Altos Hills, and the County of Santa Clara, are parties to the 1994 Operational Area Interim Agreement. This Interim Agreement was amended in 1997 and subsequently the County Emergency Services/Civil Defense Ordinance was revised in 1997, thereby empowering the Emergency Preparedness Council to serve as the Santa Clara County Operational Area Council with governing body authority to carry out the responsibilities of the OAC as required by the California Governor's Office of Emergency Services. As the Santa Clara County Operational Area Council, the Emergency Preparedness Council is empowered to make funding allocation decisions for the Emergency Management Performance Grants and Community Emergency Response Team (CERT) Grants as outlined by the California Governor's Office of Emergency Services. The Operational Area Council, for the purpose of approving the distribution of federal funds at the operational area level, has appointed an Anti-terrorism Approval Body (to be hereafter as the Approval Authority), who have the final authority for determining the Operating Area Council's allocation of Homeland Security funds.

On August 10, 2005, the Governor's Office of Homeland Security awarded the County of Santa Clara ("the County") a Fiscal Year 2005 Emergency Management Performance Grant of \$226,129 for the purpose of managing emergency planning. This agreement ("Agreement") is to transfer the sum of \$8,226.61 a portion of the grant funds, allocated on a per capita basis, from the County to the City, so that the City may implement programs as specified in the grant guidelines.

Additionally, the Anti-terrorism Approval Authority allocated FY05 Homeland Security Grant funds in the amount of \$92,000 to further the City's CERT programs. This agreement ("Agreement") is to also transfer the sum of these funds which are distributed with a \$5,000 base and \$2,012.46 (this portion allocated on a per capita basis) for a total of \$7,012.46, so that the City may implement CERT programs in accordance with the grant's guidelines.

THE AGREEMENT

Article 1. Transfer of Grant Funds.

1.1 Amount of Payment.

The County will transfer to the City funds that the County received, or will receive, under Fiscal Year 2005 CERT Grant, and the Fiscal Year 2005 Emergency Management Performance Grant. This amount will not exceed \$15,239.07 unless the state allocates the County additional funds under the

Fiscal Year 2005 CERT Grant, or the Fiscal Year 2005 Emergency Management Performance Grant following the execution of this agreement.

Article 2. City's Obligations.

2.1 Use of Funds.

(a) The City will use the funds granted under this Agreement only for the purpose of implementing applicable programs under the Fiscal Year 2005 CERT Grant, and the Fiscal Year 2005 Emergency Management Performance Grant.

(b) The City will use the funds and equipment granted under this Agreement in a manner consistent with:

- (1) the applications submitted by the County to the State for the grants under this Agreement;
- (2) the grant guidance issued by the State for the grants under this Agreement; and
- (3) the notifications issued by the State of the approval of the grants under this Agreement.

(c) The documents described in Section 2.1(b) (1)-(3) of this Agreement (collectively the "State Grant Requirements") are on file with the County and the granting agencies of the State, and are hereby incorporated into this Agreement. The City hereby acknowledges that it has received a copy of the State Grant Requirements.

2.2 Master Grant Obligations.

(a) The City agrees to comply with all applicable requirements and assurances contained in the State Grant Requirements. The City may designate vendors or sub grantees to fulfill these obligations.

(b) If any provisions of this Agreement conflict with the State Grant Requirements, the provisions of the State Grant Requirements will control.

2.3 Reporting.

(a) The City will prepare progress reports for the duration of the term of this Agreement. The reports must include the status of all activities, including equipment purchases.

(b) The reports are due to the County representative identified in Section 5.1 as follows:

- (1) Performance Period 1 (October 1, 2004-December 31, 2005)- due by January 10, 2006
- (2) Performance Period 2 (January 1-June 30, 2006) – due by July 10, 2006
- (3) Performance Period 3– (July 1-December 31, 2006)) -due by January 10, 2007

(c) The County will provide the City with a report template, (Exhibit A) and the City will utilize the template.

(d) The City will notify the County representative identified in Section 5.1, within 15 days, when the City has completed all performance obligations for these grants.

Article 3. Term and Termination.

3.1 Term of Agreement.

This Agreement is effective from date of execution through the date that the County receives notification from Governor's Office of Emergency Services that the County's Fiscal Year 2005 CERT Grant and Fiscal Year 2005 Emergency Management Performance Grants have been closed out.

3.2 Termination.

- a. Either party may terminate this Agreement for cause upon written notice to the other; cause includes, but is not limited to a material breach of this Agreement, or a violation of any applicable laws.
- b. Opportunity to cure. The non-breaching party shall give written notice of the breach to the breaching party, specifying the breach. The breaching party shall not be deemed in default hereunder and the non-breaching party shall not institute proceedings or exercise any remedies against the breaching party unless the breach has not been cured, corrected or remedied within thirty (30) days after the giving of such notice of breach or within such longer period as may be reasonably required to cure, correct or remedy the breach, provided the breaching party has commenced such cure, correction or remedy within such thirty (30) day period and diligently and continuously pursues such cure, correction or remedy.
- c. If Agreement is terminated, the City shall return funding in accordance with grant guidelines.

Article 4. Liabilities.

4.1 Mutual Indemnification.

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the County and the City agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any

officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other parties under this Agreement.

Article 5. Miscellaneous.

5.1 Notice.

All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such other address as the party may designate in writing:

To the City:

Clare Frank
Fire Chief
Milpitas Fire
777 S. Main St.
Milpitas, CA 95035

To the County:

Celeste Cook
Director of Emergency Preparedness
County of Santa Clara
Office of Emergency Services
55 W. Younger Ave., Suite 435
San Jose, CA 95110

5.2 Compliance and Nondiscrimination.

The parties will comply with all applicable Federal, State, and local laws and regulations. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973 (Sections 503 and 504), the California Fair Employment and Housing Act (Government Code sections 12900 et seq.), and California Labor Code sections 1101 and 1102. The parties will not discriminate against any

subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor will the parties discriminate in the provision of services provided under this Agreement because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

5.3 Governing Law.

This Agreement has been executed and delivered in, and will be construed and enforced in accordance with, the laws of the State of California.

5.4 Assignment.

The parties may not assign this Agreement or the rights and obligations hereunder without the specific written consent of the other.

5.5 Entire Agreement.

This document represents the entire Agreement between the parties with respect to the subject matter hereof. All prior negotiations and written and/or oral agreements between the parties with respect to the subject matter of this Agreement are merged into this Agreement.

5.6 Amendments.

This Agreement may only be amended by an instrument signed by the parties.

5.7 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

5.8 Severability.

If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

5.9 Waiver.

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing,

and shall apply to the specific instance expressly stated.

Signed:

COUNTY OF SANTA CLARA

CITY OF MILPITAS

by _____
Peter Kutras, Jr. _____
County Executive date

by _____
Charles Lawson _____
City Manager date

Approved as to Form and Legality:

Approved as to Form and Legality:

Jared A. Goldman, Deputy County Counsel

Steven Mattas
City Attorney

Exhibit A Report Template

George Washburn

From: Cindy.Stewart@oes.sccgov.org
Sent: Friday, November 18, 2005 5:16 PM
To: George Washburn
Subject: MOU and Report Form



Milpitas-County
OES 05 Agree...erformance Period..

-Exhibit A-

I have attached two files. (1) your FY05 MOU and (2) a blank Performance Period Report.

Please read the following information before proceeding:

1. Print two copies of your city's MOU. Please check to be sure that I gave you the right file.
2. This version of the MOU should have whatever changes you requested from last year, as well as, a slight change on Paragraph 3 of the Background Section ("Additionally, the Anti-terrorism Approval Authority allocated...") Please be sure you agree with all the changes.
3. Please have your city manager and city counsel SIGN BOTH COPIES AND RETURN THEM BOTH TO ME. I will have the County Executive and County Counsel sign both copies. Once both copies have all the appropriate, original signatures I will return one copy to you and keep the second copy of our files. You will also receive a check for the amount in Paragraph 1.1 under "Amount of Payment" at that time. (Hopefully, we can complete this process and I can give you the check by December EMA.)
4. The second attached file is the Performance Period Report. Review your MOU to familiarize yourself with the reporting periods for these grant funds. Please retain this form and use it when reporting on your progress by the deadline. The first performance period is due January 10, 2006. For your convenience, you will also get a copy of this form in your email.
5. If you have any questions, please call or email me. (408-808-7808, or cindy.stewart@oes.sccgov.org)

(See attached file: Milpitas-County OES 05 Agreement.doc) (See attached file: -Exhibit A- Performance Period Report Form.doc)

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Cindy Stewart  
Office of Emergency Services  
County of Santa Clara  
55 West Younger, Suite 435  
San Jose, CA 95110  
Phone: (408) 808-7808 Fax: (408) 294-4851  
cindy.stewart@oes.sccgov.org  
http://oes.sccgov.org

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NOTICE: This email message and/or its attachments may contain information that is confidential or restricted. It is intended only for the individuals

named as recipients in the message. If you are NOT an authorized recipient, you are prohibited from using, delivering, distributing, printing, copying, or disclosing the message or content to others and must delete the message from your computer. If you have received this message in error, please notify the sender by return email.

City of Milpitas, California

Budget # _____
Refer # _____

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one: <input checked="" type="checkbox"/> Budget Appropriation <input type="checkbox"/> Budget Transfer	100-3558	\$15,239.07	100-8404223 100-2940	\$7,012.46 \$8,226.61

Explain the reason for the budget change:

The County of Santa Clara (the Operational Area) was again awarded federal grant funds through the Governor's Office of Emergency Services and the California Office of Homeland Security. The funds are distributed from the federal level, to the State Office of Homeland Security, through the Operational Area (County OES) as a central clearinghouse, and finally are distributed to the local jurisdictions. These funds are typically distributed on a per capita basis. This agreement includes two grants: FY 2005 Emergency Management Performance Grant (EMPG), and FY 2005 Citizen Corps Grant. The total amount of \$15,239.07 will be utilized for the development of our CERT (SAFE) program, disaster planning, mitigation, and preparedness, and as an offset to Fire/OES salaries (EMPG).

Approve budget appropriation for \$15,239.07 from Santa Clara County to the Fire Department's OES operating budget for the development of our CERT (SAFE) program, disaster planning, mitigation, preparedness, and as an offset to Fire/OES salaries (EMPG).

☒ Check if City Council Approval required.

Meeting Date: December 6, 2005

Itemization of funds, if needed:			Amount
<div>Requested by: _____</div> <div>Division Head: _____</div> <div>Department Head: <i>John</i></div> <div>Reviewed by: _____</div> <div>Finance Director: <i>John C. Karl</i></div> <div>Approved by: _____</div> <div>City Manager: _____</div>			
Date approved by City Council, if required:			Confirmed by: _____